No. [redacted]

IN THE

Supreme Court of the United States

October Term, 1944

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Petitioner

against

UNITED STATES OF AMERICA,

Respondent

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, on Reargument

JOSEPH O. CARSON
220 East Michigan Street
Indianapolis, Indiana

CHARLES H. TUTTLE
15 Broad Street
New York City, N. Y.

HUGH K. McKEVITT
1620 Russ Building
San Francisco, California

Attorneys for this Petitioner

* Case No. 666, October Term, 1944.

SUBJECT INDEX

Index

CASES CITED

CODES AND STATUTES

TEXTBOOKS AND OTHER AUTHORITIES

No. 9

IN THE

Supreme Court of the United States

October Term, 1944

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, on Reargument

On June 18, 1945, this Court ordered a reargument of this case (No. 666) and the companion cases, Nos. 667, 668, 674 and 675 in the October Term, 1944.

The memorandum of the Court read:

"These cases are ordered restored to the docket and assigned for reargument. Counsel are requested to discuss in their briefs and upon oral arguments the following questions:

"1. The scope of Section 6 of the Norris-LaGuardia Act in relation to prosecutions under the anti-trust laws.

"2. The scope of Section 6 in relation to Section 13 b.

"3. The scope of the words 'association or organization' appearing in Section 6, in that section's relationship to Section 13 b.

"4. Consideration of the court's oral charge and written charges requested and refused involving Section 6 in the light of objections and exceptions by each and all of the defendants and the state of the evidence on that issue as to each of them."

The Scope of This Brief

In this brief this petitioner addresses itself to each of these enumerated points in the order of their statement.

The petitioner also reaffirms the statements and arguments in its Main and Reply Briefs before this Court on the original argument; and it concludes the present brief with a discussion at page 51 of the subsequent decision of this Court in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797.

The Petitioner, United Brotherhood

The Indictment alleges that the defendant The United Brotherhood of Carpenters and Joiners of America is an international trade union of carpenters and joiners in the United States and Canada, with a membership of approximately 350,000 persons and with its headquarters and general offices at Indianapolis, Indiana (318). The pertinent provisions of the Constitution and Laws of the Brotherhood are in evidence (459 *et seq.*).

According to this Constitution, the objects of the United Brotherhood are solely those approved by Section 2 of the Norris-LaGuardia Act. They are (460):

"To discourage piecework, to encourage an apprentice system and a higher standard of skill, to cultivate friendship, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to establish a weekly payday, to furnish aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual and social conditions of all our members, and to improve the trade."

By this Constitution the United Brotherhood is affiliated with the American Federation of Labor (462); its "jurisdiction shall include all branches of the Carpenter and Joiner trade" (461); and its local organizations, such as District Councils and Local Unions, are given a broad local autonomy. (See pp. 25-27; *post.*)

Under the General Constitution, the governing body of the United Brotherhood (subject only to action by its membership or its General Convention) is the General Executive Board which consists of a number of members, seven of whom are elected from different regions (558). The powers and duties of the General Executive Board (so far as here relevant) are (558):

(1) "Protect the property and interest of the United Brotherhood in such a manner as they may deem helpful and beneficial."

(2) Decide points of law, all grievances and appeals submitted to them in legal form and their decision shall be binding until reversed by the convention."

(3) "Authorize strikes in conformity with the constitution and laws of the United Brotherhood."

(4) "Defend the organization in any locality against * * * attacks."

(5) "Support such locality by levying a * * * assessment."

(6) "Enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance."

The General Convention meets every four years and is composed of delegates elected from all over the United States (559). Changes in the General Constitution can be made only by referendum vote of the members of the Brotherhood.

POINT I

Section 6 of the Norris-LaGuardia Act is applicable to prosecutions under the anti-trust laws. Its applicability to this criminal case has been conceded by the respondent before this Court.

Section 6 defines the substantive and evidentiary conditions requisite to a union's criminal responsibility under the anti-trust laws for the acts of an officer or agent.

Both because the Trial Court specifically refused to require the jury to find these requisites, and because it specifically instructed the jury that this petitioner could be found guilty according to the rules of imputed responsibility in civil cases, this petitioner's conviction must be reversed.

The Respondent's Concessions

At page 51 of its former brief before this Court, the respondent said:

> "Section 6 of the Norris-LaGuardia Act also provides that a labor organization shall not be responsible for the unlawful acts of its agents unless upon 'clear proof' of actual authorization. This requirement, *which applies to civil as well as to criminal cases*, is, of course, no more stringent than the rule that guilt in a criminal case must be shown beyond a reasonable doubt." (The italics are ours.)

And again, at page 20 of its former brief, the respondent said, concerning a charge by the Trial Court as to union responsibility in this criminal case:

"This instruction correctly applies the principles established in the *Coronado* cases and embodied in Section 6 of the Norris-LaGuardia Act."

Indeed, throughout the respondent's former brief, it continuously and consistently assumed the application of Section 6 of the Norris-LaGuardia Act to the present case, and argued merely as to its meaning and as to whether the charge of the Court met its requirements. (See pp. 42-51 of that brief.)

The Hutcheson Case

At the threshold stands the decision of this Court in *U. S.* v. *Hutcheson*, 312 U. S. 219 (1941). It established the following principles:

1. The Norris-LaGuardia Act must be deemed an integral part of the anti-trust laws. The Sherman Law, Section 20 of the Clayton Act and the Norris-LaGuardia Act must be read together "as a harmonious text of outlawry of labor conduct" and as "interlocking statutes" (pp. 231, 232).

2. The Norris-LaGuardia Act "immunized trade union activities as redefined" therein, and removed all such activities "from the taint of being a 'violation of any law of the United States', including the Sherman Law" (p. 236).

3. Although the Norris-LaGuardia Act dealt explicitly with injunctions in labor disputes, it is not possible "to say that that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison" (p. 234).

4. The Norris-LaGuardia Act must be deemed a disapproval of *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assoc.*, 274 U. S. 37 (p. 236).

These principles and this decision have been repeatedly reaffirmed by this Court:

U. S. v. *Building & Construction Trades Council*, 313 U. S. 539;
U. S. v. *United Brotherhood of Carpenters & Joiners of America*, 313 U. S. 539;
U. S. v. *International Hod Carriers and Common Laborers' District Council*, 313 U. S. 539;
U. S. v. *American Federation of Musicians*, 318 U. S. 741;
Allen Bradley Co. v. *Local Union No. 3*, 325 U. S. 797;
Hunt v. *Crumboch*, 325 U. S. 821, 824.

In the last named case this Court, in stating the place of the Norris-LaGuardia Act in the anti-trust laws, said (p. 806):

> "*United States* v. *Hutcheson*, 312 U. S. 219, declared that the Sherman, Clayton and Norris-LaGuardia Act must be jointly considered in arriving at a conclusion as to whether labor union activities run counter to the Anti-trust legislation. Conduct which they permit is not to be declared a violation of federal law. That decision held that the doctrine of the *Duplex* and *Bedford* cases was inconsistent with the congressional policy set out in the three 'interlacing statutes'".

Section 6

The background furnished by these principles and these decisions clarifies the answer which must be made to the first point designated by this Court for reargument. Section 6 of the Norris-LaGuardia Act reads:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual partici-

pation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

No section of the Norris-LaGuardia Act gives greater support than does this Section 6 to the now settled law that that Act is not, and cannot be, confined in its legal effect to a mere limitation of power to grant injunctions.

No other section of that Act contains so clearly an express and explicit purpose, when interlaced with Section 20 of the Clayton Act, to be applicable to any action (civil or criminal) under "any law of the United States" in "any court of the United States", and to lay down both the substantive and the evidentiary principles which in any such action shall condition the responsibility of a defendant association or organization participating or interested in a labor dispute, where responsibility is sought to be imposed by reason of the unlawful acts of individual officers, members or agents.

Obviously, the legislative intention was to shift the condition of such responsibility from the mere fact of agency, as in a civil case, to the requirement of actual personal guilt, as established by the degree of evidence required by the section, to wit: "clear proof" of actual complicity.

In other words, Section 6 presents two comprehensive statutory declarations applicable to any action (civil or criminal) under any anti-trust law of the United States against a labor union "participating or interested in a labor dispute". Those declarations are:

1. The substantive principle that a union as such is not answerable for the unlawful acts of an agent solely by reason of the agency or the intent of the agent, but only by reason of actual complicity on its own part.

2. The evidentiary rule that such personal complicity cannot be deemed established "except upon clear proof of actual participation in, or actual au-

thorization of, such acts, or a ratification of such acts after actual knowledge thereof".

"association or organization"

There can be no question that the United Brotherhood is an "association or organization" within the meaning of Section 6. The Norris-LaGuardia Act does not use the term "union". It uses the broader and more comprehensive words "association" and "organization". Both these terms are set forth in the declaration of public policy in Section 2 and are thereafter carried forward through various subsequent sections of the Act. This Court in deciding *U. S.* v. *Hutcheson, supra,* assumed—and necessarily assumed—that the United Brotherhood was an association or organization within the meaning of that Act. The indictment herein describes it as "a voluntary, unincorporated association of individuals" (18).

Section 6 extends its conditional immunity to two classes. The first class is the individual "officer or member of" the association or organization. The second class is the association or organization itself. Upon neither class is criminal responsibility to be imposed by any court of the United States except where actual personal complicity has been established by clear proof. This conditional immunity is universally applicable when the association or organization is "participating or interested in a labor dispute."

"actual"

There can be no mistaking the legislative intent behind the three-fold emphasis on the word "actual".

No room whatever was to be left for mere imputation or for constructive responsibility. The section insists upon the factual and the specific, as distinct from the implied or the theoretical. It transcends any particular procedure or any particular form of action. It is wholly objective and conditioned only by reality.

The standard definition of the word "actual" is entirely free from legal verbalism and is accurately given as follows in Webster's International Dictionary (2d ed.) Unabridged:

> "Existing in act or reality; really acted or acting or being; in fact; real".

"the unlawful acts"

So, likewise, in Section 6 the words "the unlawful acts" are without any limitation or hint of limitation.

They are completely comprehensive, and are the counterpart of the reference in Section 20 of the Clayton Act to any "violation of any law of the United States", including the Sherman Law. They are not limited to civil torts or to any particular causes or forms of action. They apply automatically if the act under trial by the court is "unlawful".

Webster's International Dictionary defines the word "unlawful" as follows:

> "Acting contrary to, or in defiance of, the law; disobeying or disregarding the law."

"responsible or liable"

So, also, as to the phrase "held responsible or liable in any court of the United States".

Here, again, each and every word is instinct with comprehensiveness.

The word "any" excludes limitation. It is the identity of the court as a court of the United States and not the particular jurisdiction being momentarily exercised that determines the applicability of the phrase.

Neither the word "responsible" nor the word "liable" is a technical word of legal art. Legal verbalisms were avoided and words of common and general meaning and application were chosen, for the very purpose of escaping technical restriction.

Webster's International Dictionary, in comparing the word "responsible" with others of similar meaning, describes it as "the most general term", and gives the following definition:

> "Liable to respond; likely to be called upon to answer; accountable; answerable; amenable."

The same dictionary defines the word "liable":

> "Bound or obliged in law or equity; responsible; answerable."

Clearly, both terms comprehend the general idea of accountability or answerability before the law in the matter of conduct,—accountability or answerability not to some particular body of law or by reason of some particular conduct, but rather for conduct as lawful or unlawful according to the general body of law.

One is quite as "liable" to suit by the sovereign for an act prohibited by the criminal law as one is "liable" to suit by an individual for an act prohibited by the civil law. In *People* v. *Driessen*, 178 Mich. 118, the court specifically held that the term "liability" included liability to criminal prosecution. To quote (p. 124):

> "It is next urged by respondent that the saving clause in Act 277, Public Acts of 1911, does not permit the institution of a prosecution under the old law for an offense committed under the old law after the new law went into effect. * * * It may be admitted that the saving clause is not happily framed to express the undoubted legislative intent, but we are of opinion that it is sufficient. 'All rights and liabilities existing, acquired, or incurred at the time this act takes effect are hereby saved.' Among those 'rights' is the right of the people to prosecute, and among the 'liabilities' is the liability of respondent to be prosecuted."

The subtitle

The same comprehensiveness and lack of limitation is manifest in the subtitle prefixed to this section in the U. S. C. Ann. (Title 29, Sec. 106). This subtitle reads:

> "Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents."

The repealer

Comprehensiveness also permeates the repealing clause with which the Norris-LaGuardia Act terminates (Sec. 115, U. S. C. Ann.). It reads:

> "All acts and parts of acts in conflict with the provisions of Sections 101-115 of this title are hereby repealed."

In this repealer there is no reservation or saving clause. It is a simple, absolute nullification. It manifests a plain intent to make a complete substitution and to establish new declarations in accordance with the authoritative statement of purpose and policy declared in Section 2 (Sec. 102, U. S. C. Ann.) of the Act, calling for freedom and equality on the part of labor "in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection".

The same Section 2 declares that, in order to provide a full charter of freedom for organization and concert of action in mutual aid or protection,

> "the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted".

The basic objective

Thus, the Norris-LaGuardia Act itself admonishes that its basic objective is to eliminate all factors tending to create a position of inequality between the parties to em-

ployment (particularly in the event of a labor dispute), and hence tending to interfere with complete freedom of contract.

It is inconceivable that Congress regarded civil liability as such a factor and yet did not regard criminal liability as an equal or greater deterrent to freedom of contract.

It would indeed be a strange rule of evidence which would hold that a person could be held liable civilly or enjoined in equity as responsible for the commission of unlawful acts by an agent only on clear proof "of actual participation" therein, and yet could be convicted criminally for the same acts on a lesser degree of proof or on a mere showing of an agency relationship.

The Senate Report

If, notwithstanding all the foregoing, there could still be any doubt of the effective relation of Section 6 of the Norris-LaGuardia Act to criminal prosecutions under the anti-trust laws, such doubt would conclusively be removed by reference to the authoritative statements in Congress at the time when the section was enacted.

Thus, to quote the Report of the Senate Committee on the Judiciary (drawn by Senator Norris) in its sectional analysis of Section 6 (Report No. 163, Calendar No. 176, 72d Congress, 1st Session, Feb. 4, 1932, p. 19):

> "In most cases where strikes occur involving a great many employers and employees and covering a comparatively large territory, there are often unlawful acts committed in the way of injury to property or to persons. It is not the intention of the bill to *protect anybody*, whether he be employer or employee, *from punishment* for the commission of unlawful acts either as against property or persons. But no person or organization should be held *thus liable* unless he or it caused the unlawful act or participated in it or ratified it. • • •
>
> "Opposition to this section has been voiced on the ground that it seeks to establish a 'new law of agency'.

In the first place, this section is concerned especially with establishing a rule of evidence. There is no provision made relieving an individual from responsibility for his acts, but provision is made that a person shall not be held responsible for an 'unlawful act' except upon 'clear proof' of participation or authorization or ratification. Thus a rule of evidence, not a rule of substantive law, is established. 'The general power of every legislature to prescribe the evidence which shall be received and the effect of that evidence in the courts of its own government,' has been repeatedly upheld by the Supreme Court. (See *Fong Yue Ting* v. *U. S.*, 149 U. S. 698, 749; *Bailey* v. *Alabama*, 219 U. S. 219, 238.)".

And in further discussion of Section 6 the same Senate Report said (p. 20):

"But the argument is made that a man is held legally responsible for the acts of his agents taken in due course of employment. This argument is evidently based upon a doctrine of the civil law of negligence. It has no application to *the criminal law.* • • •

"• • • It may be accepted that if a group associated in common activities becomes controlled by a lawless majority, it may be necessary for law-abiding men to dissolve their association with law-breakers; but the doctrine that a few lawless men can change the character of an organization whose members and officers are very largely law-abiding is one which has been developed peculiarly as judge-made law in labor disputes, and it is high time that, by legislative action, the courts should be required to uphold the long-established law that *guilt is personal* and that men can only be held responsible for the unlawful acts of associates because of participation in, authorization or ratification of such acts. As a rule of evidence, clear proof should be required, so that *criminal guilt* and *criminal responsibility* should not be imputed but proven beyond reasonable doubt in order to impose liability."

This language—particularly the last sentence quoted—shows conclusively that the draftsmen of the Norris-LaGuardia Act understood that the words "responsible" and "liable" in Section 6 were both applicable to an issue of "criminal guilt"; and that the Congress was expressly advised that these draftsmen so understood and intended.

That this Senate Report is weighty evidence of the legislative intent as to Section 6 has recently been held by this Court in construing under somewhat similar circumstances the true meaning of Section 8 of the same Act (*Brotherhood of Rail Road Trainmen* v. *Toledo, Peoria & Western Railroad*, 321 U. S. 50, 59, 60).

The Rulings of the Trial Court

The Trial Court disregarded all these considerations and principles.

Instead, it did three things,—all basically erroneous and decisively prejudicial:

(a) It treated Section 6 as wholly inapplicable to the case and as irrelevant to any matter of substance or of evidence before the jury.

(b) It directed the jury to determine the guilt of this petitioner (the United Brotherhood) according to the rule in civil cases for determining a principal's responsibility,—to wit, the ordinary civil rule of agency.

(c) By so doing, it deprived this petitioner of the principle applicable in all criminal cases, quite irrespective of Section 6 of the Norris-La Guardia Act, that guilt must be actual and personal and that the requisite participation must be established beyond reasonable doubt.

(1) Thus, on the issue of the United Brotherhood's criminal responsibility, the Trial Court refused to instruct the jury in accordance with the requisite conditions ex-

pressed in Section 6. Not only was its charge devoid of any reference to such section or to the requisites expressed therein, but the Trial Court specifically refused this petitioner's Request 56, which reproduced as follows the phraseology of Section 6 (1171, 1173):

> "You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find (896) upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

The Trial Court also refused, on the issue of the United Brotherhood's criminal responsibility, to instruct the jury in accordance with the principles of the common law governing such subject matter in a criminal prosecution. Specifically, it refused this petitioner's Request 55, which read as follows (1171, 1172):

> "You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act."

Instead, the Trial Court bound the jury to determine this petitioner's guilt or innocence according to the rule governing a principal's imputed responsibility in civil cases. Thus it charged the jury (1138):

> "You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

Pursuing this assumed analogy, the Trial Court further charged (1137):

> "The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation."

Not only was this instruction the converse of the requirements of Section 6, but the Trial Court went further in imputing responsibility than even the rule in civil cases, for this last instruction was tantamount to telling the jury that an agent can make his principal a party to a crime merely if he has "*assumed* to do" a criminal act "while performing duties actually delegated to him." This is an unheard-of doctrine. If it were sound, then any principal would be constantly in jeopardy of jail by reason of any criminal act that his agent might have "assumed to do" in the supposed performance of the agency. No matter how innocent or legitimate the agent's instructions or his delegated duties, his principal would become a criminal offender if the agent "assumed" to help out by perpetrating a crime.

(2) A secondary and corollary error of the Trial Court was its ruling on the subject of this petitioner's criminal responsibility for any unlawful acts of its local unions or district councils. Obviously, this petitioner was vitally concerned to have the jury instructed that it (the United Brotherhood) was not responsible *ipso facto* or on any principle of imputation for any criminal acts of any of its local unions or district councils. Its following request on this subject would seem elementary, but it was refused (Request 57, pp. 1171, 1173):

> "You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such

international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer-defendants to act as the instrument of the employers to suppress competition."

This petitioner excepted to all the foregoing instructions and refusals to instruct; and it duly assigned error (1155-6, 1158, 1529, 1530-3, 1598, 1602).

We submit that such rulings were basically erroneous and decisively prejudicial.

The Coronado and other cases

In view of the clear terms of Section 6, citation of judicial precedents would seem unnecessary; but one peculiarly applicable *a fortiori* is *Coronado Co.* v. *United Mine Workers,* 268 U. S. 295, decided before the enactment of the Norris-LaGuardia Act.

This *Coronado* case was a *civil case.* The plaintiff sued to recover damages for an alleged conspiracy by the defendants in violation of Section 1 of the Sherman Act. In the Trial Court there was a directed verdict and judgment for the defendants which was affirmed by the Circuit Court of Appeals. The Supreme Court affirmed this determination in the case of the International Union of Mine Workers of America, but reversed it in the case of the defendant local unions and of the defendant individuals who were officers of the International and of the local unions,—thus drawing a sharp distinction between, on the one hand, the criminal liability of an International Union and, on the other hand, the criminal liability of its officers and local unions and their officers.

In that case one James K. McNamara, who was himself a defendant and secretary of one of the defendant

local unions, had turned state's evidence and had testified that he had had talks with the defendant John P. White, who was President of the International, in which talks White instructed him to do various illegal and violent acts to prevent coal from being mined and sent into interstate commerce, and promised that McNamara and those who assisted him would be paid by the International Union.

White also, at various times, made speeches of "earnest approval" of the strikes, and reported on them to the International Board. Editorials in the International's magazine defended them (p. 300).

Nevertheless, and notwithstanding that the case before it was merely *a civil case*, the Supreme Court held that these acts by the President of the International and the accompanying acts of conspiracy and violence by the local unions and their officers and members did not bind and render liable the International. The Supreme Court quoted from the General Constitution of the United Mine Workers of America certain provisions which closely resemble the General Constitution of the United Brotherhood of Carpenters and Joiners of America, and then said (300):

> "It does not appear that the International Convention or Executive Board ever authorized this strike or took any part in the preparations for it or in its maintenance, or that they ratified it by paying any of the expenses."

Peculiarly applicable also is the decision in *United States* v. *International Fur Workers Union*, 100 F. (2d) (C. C. A. 2) 541; certiorari denied 306 U. S. 653.

In that case, in a prosecution under Section 1 of the Sherman Act, a verdict of guilty was rendered against an international union (International Fur Workers Union of the United States and Canada) and against a number of its local unions and certain officers of the international and of the local unions. This verdict against the international union was reversed by the Circuit Court of

Appeals *for the very error that occurred in the present case.* To quote (547):

> "But an officer of an unincorporated association, no more than an officer of a corporation, is not authorized merely by virtue of his office to make his principal a party to an unlawful conspiracy. See *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963; *Hill* v. *Eagle Glass & Mfg. Co.*, 4 Cir., 219 F. 719, modified on other grounds in *Eagle Glass & Mfg. Co.* v. *Rowe*, 245 U. S. 275, 38 S. Ct. 80, 62 L. Ed. 286. All that the court said on this subject was that if the individual defendants did the things charged against the unions 'upon behalf of the unions,' they might be found guilty along with the individuals. To this the appellant unions excepted. It was erroneous; it excluded the issue whether the unions had authorized or ratified what their officers did upon their behalf. For this reason the conviction of each of the labor union appellants must be reversed."

See also:

Truck Drivers' Local No. 421 v. *United States*, 128 F. (2d) (C. C. A. 8) 227;

Barker Painting Co. v. *Brotherhood of Painters*, 15 F. (2d) (C. C. A. 3) 16, 18;

U. S. v. *Local 807*, 118 F. (2d) (C. C. A. 2) 684, 688;

Donnelly Garment Co. v. *Dubinsky*, 55 Fed. Supp. 587, 594-5.

POINT II

Section 13(b) is merely definitional of a phrase occurring in Section 6 and in other sections of the Norris-LaGuardia Act.

It cannot confine, and was not intended to confine, the operation of Section 6 to civil cases. Any argument to the contrary would carry the logical conclusion that the decisions of this Court in *U. S.* v. *Hutcheson* and the cases following it were all erroneous.

The application of Section 13(b) to this case has been conceded by the respondent.

(1) Section 13 (U. S. C. A. §113) is entitled: "Definitions of terms and words used in chapter"; and it declares the definitions to be applicable to all sections of the Act.

Section 13(b) reads:

> "A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

(2) The respondent has conceded that in this very case and for the purposes of it, the United Brotherhood is within this definition.

Thus, in its former brief before this Court, the respondent expressly conceded that it had the burden of showing that the agreements of 1936 and 1938 were violative of Section 1 of the Sherman Act, notwithstanding that (p. 21):

"it (such agreement) was entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment or that the union group participated in the agreement for the purpose of promoting their own self-interest."

And with further frankness and inevitability, the respondent's former brief also conceded (p. 26):

"It may be conceded that the validity of the convictions of the petitioners who stood trial must be tested upon the assumption that the agreement not to purchase low-cost and low-wage-scale millwork grew out of such a dispute (between employers and employees concerning terms or conditions of employment)."

Still further narrowing the basic issue of law, and referring directly to Section 13(b), the respondent's former brief also stated and conceded (p. 28) that, within this definition in the Norris-LaGuardia Act, the union defendants were engaged in a labor dispute not only with the employers in the Bay Area but also with the *"out-of-State"* employers who imposed less favorable wages and working conditions. To quote this important and realistic concession (p. 28):

"It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-LaGuardia Act, the out-of-State producers of millwork would be parties to a labor dispute between the Bay Area manufacturers and their employees. It is also true that Section 20 (of the Clayton Act) immunizes 'ceasing to patronize' a party to a labor dispute or 'recommending, advising or persuading others * * * so to do'."

(3) The phrase in Section 13(b), "if relief is sought against him or it," does not and cannot confine Section 6 by relation or construction to civil cases only.

In a criminal case relief is demanded on the part of the sovereign for an offense against its laws, and the form of

the relief is a judgment which shall not only punish but also deter, restrain and even confine the defendant, and tend to deter others. The relief sought is vindication of the law, the protection of society, and the prevention by fine or imprisonment or both of the continuance or resumption of the offending conduct. To quote the time-honored and stereotyped conclusion of the instant indictment presenting the defendants for the Court's judgment because of conduct (37):

> "against the peace and dignity of the United States and contrary to the forms of the statute of the United States in such cases made and provided."

In other words, in a criminal prosecution, the relief sought is the bringing of the accused to justice; and, if the prosecution is successful, the relief obtained is the judgment and sentence of conviction. In a criminal action the sovereign is the "plaintiff" *eo nomine;* and it comes into court for judgment and redress, quite as truly as does a private suitor who institutes a civil action.

Thus the conclusion is inescapable that the words, "if relief is sought against him or it", are not restricted to a civil case but are applicable to *any* "case" as that term is used in Section 13(a), which begins:

> "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation, etc."

This term, "a case", is unrestricted to any particular class or classes of causes of action, whether civil or criminal. It embraces any action where a plaintiff accuses a defendant of unlawful conduct and seeks judgment and redress therefor.

(4) If any other interpretation were to be given to these words in Section 13(b), then the very basis of the decision of this Court in *U. S.* v. *Hutcheson, supra,* and the

decisions following it, would be nullified; for the phrase defined in Section 13(b) occurs in various other sections of the Norris-LaGuardia Act and is part of its standard, recurrent phraseology and is essential to the circumference of the Act itself.

If, therefore, there were anything in the definition which would exclude all but civil cases, then all but civil cases would be excluded from the operation of the Act itself, and conduct which would be remediless in a civil case would still "in a criminal proceeding become the road to prison". (*U. S.* v. *Hutcheson*, 312 U. S. 219, 234-5).

(5) Certainly the legislative framers of the definition in Section 13(b) never dreamed that they were framing a procedural limitation and a differentiation between cases or causes of action, and not, on the contrary, a substantive enlargement and a new and greater inclusiveness.

We have but to quote the Report of the House Committee on the Judiciary recommending this enactment and submitted by Mr. LaGuardia (Report No. 669, March 2, 1932, p. 10):

> "SECTION 13: Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough to include others than the immediate disputants and thereby corrects the law as announced in the case of *Duplex Printing Press Co.* v. *Deering*, *supra*, wherein the Supreme Court reversed the circuit court of appeals and held that the inhibition of section 20 of the Clayton Act only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the *American Steel Foundries Co.* v. *Tri-City Central Trades Council, supra.*"

POINT III

The words "association or organization" in Section 6 and the word "association" in Section 13(b) are equally inclusive of the United Brotherhood.

What we have said under the preceding Point anticipates and presents our response to the third point in this Court's order for reargument.

It will be observed that Section 13(a) uses the words "association" and "organization" interchangeably. Indeed, the primary and general definition of the subject matter to which the Act applies immunity is contained in Section 13(a), which defines "a case" involving or growing out of a labor dispute. Section 13(b) is merely ancillary to that primary and general definition. It is a corallary and an abbreviated repetition,—carrying over the subject matter of such "a case" to the "person or association" who is a party to the case and has the participation or interest specified.

Only through "a case" in court can a union be "held responsible or liable" for the unlawful acts of individual officers, members or agents. Where the "case" involves or grows out of a labor dispute as defined in Section 13(a), the conditional immunity granted by Section 6 is rendered applicable to every person or association who is participating or interested in such labor dispute, and who is sought to be "held responsible or liable" in that case.

Section 13(b) merely makes the already obvious conclusion express.

POINT IV

The oral charge of the Trial Court as to the criminal responsibility of the United Brotherhood, and the Court's refusal of written requests for instructions as to Section 6 of the Norris-LaGuardia Act, when considered in the light of objections and exceptions by this defendant and the state of the evidence as to it, rested on such basic error as to necessitate a reversal.

In the case of the United Brotherhood, such reversal should direct a dismissal of the indictment, or at least a new trial, for there was no clear proof of actual complicity on its part, as required by Section 6.

The oral charge by the Trial Court as to criminal responsibility on the part of the United Brotherhood, and the Trial Court's refusals of its written requests for instructions involving Section 6 of the Norris-LaGuardia Act, have already been discussed at pages 14-17, *supra*.

The effect of such charge and refusals to charge was not only to deny the applicability of Section 6 but actually to impose something even less than the rule of imputed responsibility in *civil* cases.

The United Brotherhood excepted to all the oral charges on this subject and to the refusal of its requests for instructions; and it has duly assigned error (1155-6, 1158, 1529, 1530-3, 1598, 1602).

We come therefore to a consideration of the state of the evidence as to any criminal responsibility on the part of the United Brotherhood under the first Count of the Indictment herein,—the only Count which went to the jury (111, 139).

Under the General Constitution of the Brotherhood, the supreme authority resides in the members of the Brotherhood who elect delegates to the Convention and must pass, by referendum vote, on proposed changes in

the General Constitution. Subject, however, to the membership and to the General Convention, the governing body of the Brotherhood is its General Executive Board. At page 3, *supra*, we have enumerated the powers of that Board.

There is no proof—not even a claim—that the General Executive Board or General Convention or the membership of the Brotherhood ever took any action whatsoever on any portion of the subject matter contained in Count 1 of the Indictment. Indeed, according to that Count, the United Brotherhood was expressly joined as a defendant on the principle of imputation, to wit, "as advisor to, supervisor of, and governing body for carpenters' local unions and carpenters' district and state councils in the United States of America, including the Bay Counties District Council of Carpenters" (par. 14, p. 18),—a principle of inclusion expressly excluded by Section 6 of the Norris-LaGuardia Act.

Furthermore, by the General Constitution of the United Brotherhood the various District Councils and Local Unions are given broad local autonomy and right of self-government and independent action. To quote (461):

> "To subordinate local or auxiliary unions, district, state and provincial councils the right is conceded to make all necessary laws for local and district, state and provincial councils which do not conflict with the laws of the international body.
>
> "In cases where local central bodies are formed, local or auxiliary unions, district, state and provincial councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America."

And, on the subject of local autonomy, the Constitution also provides (461):

> "Section 25. Local unions where no district council exists shall have the power to make by-laws and

trade rules for their government and the members of the United Brotherhood working in their jurisdiction, which shall in no way conflict with the constitution and international laws of the United Brotherhood, state council or provincial council."

As to strikes, the Constitution also emphasizes local autonomy, for it provides (462):

"Section 59. Job or shop strikes are to be conducted on rules made by the district council or the local union where a district council does not exist. A trade demand inaugurated by a local union affiliated with a district council must be endorsed by the district council and submitted to the general executive board for their sanction.

"Where a district council exists it shall adopt rules for the government of strikes and lockouts in that district, as provided for in the constitution and laws of the United Brotherhood."

SUBDIVISION I

The United Brotherhood was not a contracting party in any of the main agreements.

The United Brotherhood was not a contracting party in any of the contracts of 1935, 1936, 1938 and 1939 (Ex. N, p. 754; Ex. 131, p. 280; Ex. 132, p. 288; Ex. 172, p. 535).

Moreover, the United Brotherhood was not a party signatory to the Arbitration Agreement of 1938 and did not participate in the arbitration proceeding (Ex. R, p. 768).

The 1939 contract contains none of the clauses which the prosecution has challenged as violative of the Sherman Law (Ex. 172, p. 535); and there is nothing therein which can by any possibility be argued to be violative of that Law. There is the following at the end thereof (544):

"Witnessed by
J. F. Cambiano—Gen'l. Representative, witness".

Also the final paragraph of the 1939 contract read (544):

> "4. The signature of the International Officer of the United Brotherhood of Carpenters and Joiners of America affixed hereto signify the approval of this contract by the International and further binds the International to approve only such mill and cabinet employer and employee Agreements entered into in the six (6) counties herein mentioned as are uniform with respect to rates of wages, hours and working conditions throughout the six (6) counties."

All these agreements were purely local affairs, and the clause above quoted in the 1939 contract only confirms the contention of the defense that these contracts related to the local situation and had local objectives,—among which was the primary and wholly beneficial objective of preserving uniformity in rates of wages, hours and working conditions throughout the six counties constituting the Bay Area.

This Area was a single economic unit,—a sort of metropolitan area united by water, rail and road. To have had varying scales of wages, hours and working conditions in such an Area would have meant chaos in the industry therein. The local unions had a primary right to push to a successful conclusion in 1938 their struggle to bring all the counties up to the level of wage and working conditions established in the County of San Francisco by the 1936 contract. (*Amer. Foundries* v. *Tri-City Council*, 257 U. S. 184, 209).

SUBDIVISION II

Throughout the period involved the General Office of the United Brotherhood repeatedly ruled that articles bearing the union label must be installed in the Bay Area irrespective of wage-scale.

Because of the importance of these official determinations to the position of the United Brotherhood in this case, we wish to clinch it by quoting from the correspondence.

In the first part of August, 1938, Mr. Edwards, representing the Alameda County employers who were refusing to be bound by the Arbitration Award, sent to the General President (Wm. L. Hutcheson) at Indianapolis the following telegram (452, 454):

> "Can millwork carrying Brotherhood of Carpenters' Label be discriminated against because of being made at a wage lower than called for in local agreement. We know your policy but we want a positive answer today. (Signed) Edwards."

To this telegram, Indianapolis sent to Mr. Edwards the following reply (454):

> "Muir enroute to San Francisco. Millwork carrying Brotherhood Label should not be discriminated against.
>
> S. P. Meadows
> For the General President."

This response was in accordance with the provisions of the General Constitution which required that materials bearing the union label be recognized "in any part of the jurisdiction of the United Brotherhood" (459-461).

Next, the prosecution witness, Louis D. Wine, who was Special Agent for the Federal Bureau of Investigation, testified in response to prosecution's counsel that on March

22, 1940 he had a conversation with the defendant Walter C. O'Leary, who had said that his local union would object to lumber coming into the Bay Area (217-8) "unless it was made in accordance with the current labor wage scale and according to current union working conditions." The witness then testified (221):

> "* * * I mentioned to him Mr. Hutcheson, the president of the International (the United Brotherhood), I said, 'How would he feel about that?' He said, 'Mr. Hutcheson's statement to the union was, the union label should be considered the same as legal tender, the same as a five-dollar bill; *good any place in the United States.*'"

This testimony was confirmed by the defendant O'Leary (982).

Further confirmation was furnished by the letter written by the defendant David H. Ryan, secretary of the Bay Counties District Council, to President Hutcheson on December 6, 1938 (Ex. 41-4), wherein Mr. Ryan quoted the aforesaid telegram of August, 1938, from the General Office, and reported as to what he had stated at a conference with the Employers covering articles bearing the union label (453):

> "I pointed out to the Employers that copies of this letter carrying this information were sent to home-builders, contractors, architects, and others, broadly advertising the fact that that kind of millwork could be brought in and would be installed, and that moreover, William Hague, Secretary of the Associated General Contractors, in his bulletins sent to all of his membership, drew their attention specifically to the fact that they could bring such material in, *and that it had to be installed by Union carpenters.* I stated to the representatives of the San Francisco Employers * * * that the General Office, in my presence in a meeting in their office, stated that woodwork bearing the label *would have to be installed regardless of the scale paid in its manufacture.*" (Emphasis supplied.)

The defendant Cambiano gave like testimony (1110).

Still further proof is furnished by a letter dated April 7, 1939, from M. A. Hutcheson, First General Vice President, to Mr. D. P. Ryan, Secretary of the Bay Counties District Council. This letter reads (Exhibit G, p. 557):

"Dear Sir and Brother:—

"We are in receipt of a letter from Local Union No. 1689 of *Tacoma, Washington,* asking us to communicate with your Council and advise that their members are working for the Tacoma Millwork & Supply Co. under agreement and have the use of our label for their products, therefore, any material coming into your community from this firm bearing our label would be manufactured under consideration satisfactory to our organization.

"Yours fraternally,

M. A. HUTCHESON,
First General Vice President."

How, we ask, can the General Office in Indianapolis be deemed to be participating in the conspiracy charged here when, as shown by this very letter, written as late as April 7, 1939, it was directing the local unions in the Bay Area to install millwork manufactured in *the State of Washington* because it bore the union label, *even though the wage scale was less?*

SUBDIVISION III

The contract of 1938 was amended in the Fall so as to remove any question that articles bearing the union label might not be installed in the Bay Area, irrespective of wage-scale.

The result of these orders of the General Office was that the contract of 1938, effective June 15, 1938, was amended in the Fall of that year so as to insure conformity with such orders (Ex. 132, pp. 288, 291-5).

The circumstances of this amendment were testified to by the defendant Ryan as follows (897): In the latter part of 1938 General President Hutcheson, at the St. Francis Hotel in San Francisco, was shown by Mr. Ryan the contract of 1938, and President Hutcheson inquired whether paragraph 17 meant that the local unions would not install "*union-made* millwork because it is not made at the same wage scale" (897). To quote Mr. Ryan (898):

> "Mr. Hutcheson asked what was meant and I told him, that don't mean to keep out union-made material. He said, in effect, 'That is what they will say you are doing.'" • • •
> "• • • He objected to that. I don't know what he said about it, but he said anyway it was out. He was the boss and that settled it."

The consequent amendment of the 1938 contract seems to have been verbally agreed to about October 18, 1938, but not put in writing formally until December 19, 1938, as follows (291-3, 898):

> "17. In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Car-

penters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America."

Mr. Ryan then forwarded this amendment to the General Office (899), and under date of December 23, 1938, the First General Vice-President (M. A. Hutcheson) sent him an approval thereof (455).

In the 1939 contract, executed on August 10, 1939 (Ex. 172, 534-45), there was no such paragraph at all as the aforesaid paragraph 17 either in its original or in its amended form.

The right of union members to refuse to work on articles manufactured under conditions deemed "unfair" is elementary both at common law and under the federal statutes and constitution. (*Hunt* v. *Crumboch*, 325 U. S. 821, 824.)

SUBDIVISION IV

The United Brotherhood left to the local autonomy of the local unions the matter of working out a settlement with the employers.

Furthermore, as explicitly stated in the letter of the General Office to Mr. Ryan dated December 23, 1938 (455), the United Brotherhood was leaving to the local autonomy of the local unions in the Bay Area the working out of a settlement with the local Employers, and was only taking the position "that wages, hours and conditions would all be uniform for the Six Counties" of the Bay Area (455, 1111).

Obviously, such uniformity was appropriate and indeed necessary in this Area which constituted a geographic and economic unity. The local unions in that Area had a common interest in bringing up their wage scales to a common level. No interstate commerce was involved; and

labor was merely seeking to protect itself around the Bay from the proverbial fate of a house divided against itself.

Therefore, in order to secure a uniform agreement throughout the whole Bay Area (six counties), and after a strike in Alameda County and much controversy, the local unions worked out a compromise whereby the wage scale of the 1938 contract as fixed by the arbitrators was reduced as of October 18, 1938, so as to fix the wage rate at $8.50 per 8-hour day (292). On this compromise basis, the principal employers in the Bay Area (other than the Pacific Manufacturing Company in Santa Clara County) signed the 1938 agreement (901, 1110).

All these matters were handled and negotiated by the local unions pursuant to the local autonomy guaranteed by the Brotherhood's Constitution as quoted above (pp. 26-27, *supra*). See testimony at pages 1108, 455, 894-5, 1093.

SUBDIVISION V

The part which President Hutcheson had in the incident of the Pacific Manufacturing Company, was perfectly lawful.

At the time when the 1938 Arbitration Award of $9.00 a day was made, the Pacific Manufacturing Company in Santa Clara County, which had in May, 1936, signed a contract in the 1936 form with the Local Union of the Carpenters in Santa Clara County (known as the Santa Clara Valley District Council), possessed the right to affix the union label, but was paying only $8.00 per 8-hour day—the same as other employers under the general contract of 1936.

That contract contained a clause (numbered 21) reading as follows (1092):

> "This agreement is to remain in effect for a period of not less than one (1) year from June 15th, 1937

or until June 15th, 1938, and shall continue to remain in full force and effect thereafter, except that it shall be subject to change, modification or termination by either party upon sixty (60) days notice being served in writing upon the other party."

In consequence, when the Arbitration Award of $9.00 a day came down, the Santa Clara Valley District Council had an accrued right to terminate its contract with the Pacific Manufacturing Company upon giving sixty days' notice (1092). If the contract were so terminated, the right of the Company to continue to use the union label would, of course, also terminate automatically.

Hence, after the 1938 Arbitration Award the Santa Clara District Council was desirous of signing up the Pacific Manufacturing Company for the new wage scale, whereas that Company was desirous of continuing at the old rate,—thereby proposing to enable itself to undersell employers in all the other Bay counties.

This dispute was reported to the General Office by the Santa Clara Valley District Council on September 13, 1938 (1086-9), and the letter of the Company of even date to the Council was enclosed with the report (1089). Thereupon President Hutcheson, in a letter dated September 20, 1938, to the Council, quoted the aforesaid clause in the contract with the Company giving the Council the right to terminate it on sixty days' notice; and on the predicate thereof he said (1092-5):

"I understand, full well, that the Pacific Manufacturing Company being located in Santa Clara is not in what is usually referred to as the metropolitan area in and around the Bay District, but in the past the agreement has been the same as that in the Bay area. * * *

"It is the duty of the undersigned, and other General Officers, to protect the members of our organization in every way we possibly can, and in view of that fact, and due to clause 21 in your agreement, hereto-

fore quoted, it is my desire that you, representing your Council, notify the Mill Operators that in conformity with Section 21 you are desirous of receiving within sixty days a wage scale equal to that of the San Francisco area that has been given to our millmen by the arbiter; namely, $9.00 per day, or if they will not pay that and the members of your district wish to continue to work at the $8.00 wage scale it will be necessary, if they desire to continue the use of the label of our Brotherhood, that they agree they will not ship their material into a locality where the wage scale is higher than that paid by the Santa Clara mill operators. In other words if they wish to continue to ship material into the San Francisco district, and use the label of the Brotherhood, it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district."

This letter of the General President postulated as its predicate that the Santa Clara District Council might lawfully terminate that contract pursuant to the foregoing te ination clause therein, and thus bring to an end as of the date of such termination the right of the Pacific Manufacturing Company to affix the union label to articles thereafter manufactured. In that event, the Pacific Manufacturing Company (if it wished to continue to pay less than the award of the Arbitrator) could get back the right to use the union label only by agreeing to keep out of those other localities in the general area where a higher scale was being paid. The President was, of course, writing (as the opening and the purport of his letter show) about localities in or adjoining the Bay Area which theretofore had contracts in accordance with the standard San Francisco form.

Moreover, this Pacific Manufacturing Company incident involved no interstate commerce whatever. It was all

part of the labor unity presented by the Bay Area itself and was a wholly legitimate labor effort to preserve throughout the Bay Area environs the very principle of a uniform wage scale which had been established by the 1936 contract and to which the Pacific Manufacturing Company had itself adhered in its 1937 contract. (*Barker Painting Co. v. Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

To quote the defendant Cambiano (1108):

> "We have always considered Santa Clara County is what is commonly known as the Bay Area. Because of that geographical fact Santa Clara subsequently came into the six-county agreement at the end of 1938, and took part in the 1939 contract. Prior to the 1921 crash here Pacific Manufacturing Company and the Bay District always worked under union conditions."

When the Santa Clara District Council gave to the Pacific Manufacturing Company sixty days notice of the termination of its 1937 contract with that Company, the latter ultimately agreed to "come in on the $8.50 rate" which represented the compromise for the six counties after the Arbitration Award of $9 a day (1109, 1110). (See pp. 34, *supra*, and 40-41, *post*.) Hence, actually the Pacific Manufacturing Company never lost its right to the union label, and continued to ship and sell wherever it chose (1110-1).

SUBDIVISION VI.

The fact that copies of the 1936 and 1938 contracts were filed with an Executive Officer of the Brotherhood in Indianapolis cannot possibly convict the Brotherhood of this alleged crime.

The prosecution stresses that copies of the 1936 and the 1938 contracts were from time to time filed with Mr. M. A. Hutcheson, First General Vice-President, and that after such filing the Vice-President issued permits for the use of the union label by the employers who signed the same.

The prosecution claims that this filing and this issuing of permits put the Vice-President on notice of the terms of paragraph 16 of the contract of 1936 (283) and paragraphs 17 and 18 of the contract of 1938 (289), and thus put the United Brotherhood in the position of acquiescing in them. This reasoning is utterly fallacious and can in no wise constitute a criminal case against the United Brotherhood.

The Vice-President issues permits for the union label to all employers of the Brotherhood's 350,000 members in United States and Canada, with whom local unions have signed contracts in the exercise of the local autonomy which such unions possess. His function in this respect is thus stated in the Constitution (413):

> "He shall have charge and issue the label and keep a record of same in accordance with the constitution and laws of the United Brotherhood."

Hence, the Vice-President has to have those contracts in his files in order to know to whom to issue permits for the use of the union label and to keep a record of the periods of such contracts in order to know when they (and hence the permits) expire. It would be purely imag-

inary to say that in consequence the Vice-President is charged with the impossible task of scrutinizing each and every paragraph, clause and sentence of these thousands of contracts in order to discover whether, lurking in them or behind them, is some possible illegality or some possibility of construction which might lead to the possibility of illegality.

The General Officers of the United Brotherhood are not lawyers. On the contrary, they are all men of their trade. It would be indefensible and intolerable to impute criminality to any one of them—even more so to the 350,000 members constituting the body of the United Brotherhood—merely because some policing agency of the Government subsequently found occasion to question the legality of some clause in these multitudes of contracts or the legality of some local practice thereunder.

But even if it be assumed—without proof and contrary to the proof—that these multitudes of contracts were examined by the Vice-President for any other purpose than to see that they were actually executed by the local union and the employer, and did not transgress the minimum pay for a union carpenter fixed in the General Constitution and, hence, were a proper basis for the issuance of a union label, there would still be no conceivable justification for a deduction that the United Brotherhood was thereby consciously making itself a participant in some alleged conspiracy against interstate commerce supposed to be lurking behind paragraph 16 of the contract of 1936 and paragraphs 17 and 18 of the contract of 1938. The Vice-President would, in such event, observe that those very paragraphs in each of those contracts expressly and explicitly exempted and excised from their operation and from the commodities affected thereby the whole field of interstate commerce; and that those paragraphs contained nothing at all on their face directed against interstate commerce, but were entirely consistent with a pur-

pose to be local in their application and effect. (See pp. 41-43, *post.*)

But these considerations need not be expanded in detail, because they are *conclusively clinched* by the fact proved in writing that the moment President Hutcheson saw this paragraph common to the 1936 and 1938 contracts, he ordered it out, as above set forth (pp. 32-33, *supra*), and as shown in the aforesaid letter of Mr. Ryan to General President Hutcheson dated December 6, 1938 (Ex. 41-4, pp. 444-5). As a result of this order by President Hutcheson, paragraph 17 in the 1938 contract was radically changed on December 19, 1938 by mutual agreement in the manner above set forth (pp. 32-33, *supra*).

SUBDIVISION VII

The presence of President Hutcheson in San Francisco in the Fall of 1938 cannot possibly convict the United Brotherhood of this alleged crime.

The particular labor dispute which brought President Hutcheson to California "a little before October 1, 1938", and in the course of which he ordered paragraph 17 (in its then form) out of the contract of 1938, was a purely local dispute,—local to the Bay Area (901).

There is not a particle of evidence that at that time President Hutcheson had before him anything at all indicative of bad faith or insincerity in that contract's express disclaimer of any application to goods in interstate commerce (289, 290, 294).

At that time the Employers in Alameda County organized as the Wood Products Association, and the Pacific Manufacturing Company (as aforesaid) had refused to accept the uniform scale of $9.00 per 8-hour day fixed in the Arbitration Award rendered in the early Summer,

1938 (422, 769). A strike had, in consequence, broken out in Alameda County, and the destiny of the carpenters' craft in the whole Bay Area was at stake (773, 902).

It was inevitable, therefore, that the situation before President Hutcheson, while in San Francisco on that occasion, was this local controversy and this campaign for a uniform wage scale by the local unions of the Bay Area (903). There is not a particle of evidence that anything else was before him—much less that he was directing any attention to employers in other states.

As a result of all these considerations and this proof, it is but fair and in accordance with elementary principles of law to recognize that the substitute paragraph 17—substituted in writing as aforesaid in December, 1938 (pp. 32-33, *supra*)—represented to him merely a reference to the then pending local controversy, and to the current effort of the local unions around the Bay Area to secure a uniform wage scale from all employers therein. (*Barker Painting Co.* v. *Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

SUBDIVISION VIII

Paragraph 16 of the contract of 1936 and Paragraph 17 of the contract of 1938 merely reproduced a trade rule of all the building trades in San Francisco since 1903. Its presence in these contracts could not possibly convict the United Brotherhood of this alleged crime.

In the Arbitration Award which preceded the 1938 agreement, there was included by the Board of Arbitrators a paragraph reading as follows (422):

> "8. Maintenance of Fair Labor Conditions.
>
> "It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the main-

tenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement."

This clause was designed to meet a purely local situation, to-wit, that many employers in the Bay Area, including all in Alameda County, had failed to sign the Arbitration Agreement and refused to be bound by the result (772, 786, 792).

To quote the defendant Kelly (772):

"We were not arbitrating for the Northwest. The paragraph referred to conditions as existed in the territory covered by the Bay Counties District Council of Carpenters."

And again (786):

"It was to force the Oakland side to abide by the Award due to the fact that Oakland employees were part of the Arbitration Agreement. * * * That was the main reason we had in our minds at the time."

Accordingly, when the contract of 1938 was drafted, this Paragraph in the Award was embodied as a recital in Paragraph 2 thereof, and then was re-embodied as a contractual provision in Paragraph 17 thereof (subject, however, to the exemptions and exceptions of Paragraph 18 thereof relating to interstate commerce, etc.) (896).

There was nothing new about this Paragraph in the Arbitrators' Award, and it was not peculiar to the carpenters. It had been a standard clause in many previous contracts made by the various building trades unions in San Francisco constituting the Building Trades Council.

Thus, the Building Trades standard contract of 1903 contained the following clause (Deft's Ex. P, pp. 760-1):

"Sec. 1. It is agreed by the Building Trades Council, that they will refuse to handle any material

coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or employing other than union mechanics."

So, likewise, the Building Trades standard contract of 1917 provided (Pltf's Ex. 70, p. 760):

"It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics."

The same clause reappeared in the Building Trades contract of 1925 (Deft's Ex. Q, pp. 761-2). A somewhat similar clause was part of the carpenters' agreement of 1936 (283).

In consequence, when the Arbitrators by their aforesaid Award in 1938 recommended the continuance and inclusion of this clause, they did nothing more than recognize a time-honored provision which had been part of the Building Trades contracts with employers in San Francisco for the preceding 35 years,—a clause which had never been challenged and which had become basic to labor relations in San Francisco. (*Hunt* v. *Crumboch*, 325 U. S. 281, 2[illegible]

It is impossible to see how this clause could be the root of a conspiracy by the carpenters which, according to the Indictment, began in 1936 (26), when in fact the clause had been in all building trades contracts from as far back as 1903.

SUBDIVISION IX

The so-called McCreedy correspondence vindicates, rather than convicts, the United Brotherhood.

An effort was made by the prosecution to connect a general officer of the United Brotherhood with knowledge and approval of the alleged conspiracy by certain correspondence with a Mr. E. A. McCreedy, Treasurer of Grand Rapids Store Equipment Co., Grand Rapids, Mich. Actually this correspondence has exactly the opposite effect.

The Exhibits are 166, 167, 170 and 171 (pp. 480, 481, 482, 496). The J. C. Penney Company in San Francisco had from time to time placed orders with the Grand Rapids Company for patterned lumber (488). The first letter is one from the Grand Rapids Store Equipment Co. (per McCreedy) to Mr. S. P. Meadows, Second General Vice President of the Brotherhood, at the Brotherhood's office in Indianapolis. In it Mr. McCreedy thanked Mr. Meadows for the courteous hearing given them and for Mr. Meadows' promise to confer with Mr. Hutcheson about Mr. McCreedy's complaint that some unnamed person professing to speak on behalf of some San Francisco union had told the Penney Company that Grand Rapids patterned lumber would not be installed "even though we did have a label" (479, 480). The letter is dated September 6, 1938 (479).

On September 9, 1938, Mr. M. A. Hutcheson, First Vice-President of the United Brotherhood, replied to Mr. McCreedy, stating (481):

> "It is regrettable that such a condition should develop, and if you will ascertain who it was that made such statement to the representative of the J. C. Penney Company that they would not install the fixtures, I assure you we will have the matter inves-

tigated, however, it is necessary that we have this information before we will be able to proceed in the matter."

Mr. McCreedy waited two weeks before addressing himself to this request from Mr. Hutcheson, and then under date of September 23, 1938, wrote to President Wm. L. Hutcheson a letter in which he utterly failed to give the information requested but urged that the President order that Grand Rapids lumber bearing the nion label should be worked on in San Francisco. It enclosed a copy of a vague letter dated September 17, 1938, from the J. C. Penney Company (Exhibit 171, p. 496) which also failed to give the information requested.

On September 29, 1938, Mr. Meadows replied from Indianapolis, again requesting the name of the person alleged to be connected with some San Francisco union who was said to have stated that Grand Rapids fixtures would not be installed. The letter then continued (485):

"For your information will say that I am *immediately bringing* this matter to the attention of one of our general representatives to see if he can get to the bottom of the thing and straighten out the situation in a satisfactory manner." (Italics ours.)

On October 18, 1938, Mr. McCreedy wrote to Mr. Meadows saying that no word had as yet been received by the Grand Rapids Company: "Consequently, we would appreciate your early advice in this matter" (486).

To this letter Mr. W. L. Hutcheson replied (per M. A. Hutcheson) on October 20, 1938 (487):

"Your communication of October 18th in which you make inquiry concerning your letter of September 29th has been received. The reason we delayed answering your former letter was owing to the fact that we were having an investigation made in an endeavor to learn just who gave out the information that the material for the J. C. Penney Job would not

be erected, and our representative reports that he has been unable to find anyone connected with the Penney Company who had been given this information.

"*With reference to shipping the material for the present job which you are now making up, we see no reason why you should hesitate to ship that material whenever you see fit to do so, and we are sure you will have no difficulty in having your fixtures installed.*" (Italics ours.)

There is no evidence that thereafter any union in the Bay Area refused to install labelled equipment for the Grand Rapids Company; or that either the Grand Rapids Company or the J. C. Penney Company made any further complaint to the General Office in Indianapolis.

If there was some delay in finding out whether any union man had in fact told the J. C. Penney Company what it was alleged to have reported to the Grand Rapids Company, the fault was really with the J. C. Penney Company, because as Mr. McCreedy admitted (498):

"The correspondence would indicate that nobody knew who the person was who made the remark about installing the J. C. Penney job. It is true that the correspondence is predicated upon a claim tha some Union representative said they could not instal. a job and nobody knew who the man was who made the statement. Our correspondence is based on what the Penney Company told us, and the Penney Company didn't know who the man was, according to our correspondence, that they talked to."

This correspondence, though put in evidence by the prosecution, fully exonerates the executive officers of the United Brotherhood. They sought vainly through the Grand Rapids Company and through the Brotherhood's own general representative to find out whether there was any truth in the Grand Rapids Company's hearsay complaint. Certainly, the Penney Company and the Grand Rapids Company both failed to make good.

Nevertheless, instead of treating the episode as a mare's nest, the General Office at Indianapolis went out of its way to assure the Grand Rapids Company that they could ship into San Francisco whenever they saw fit to do so and that their fixtures would be installed (487-8).

SUBDIVISION X

The contract of November 1, 1938, by Local 1956 of Contra Costa County (one of the Bay counties) with the Redwood Manufacturers Company cannot possibly convict the United Brotherhood of this alleged crime.

Under date of November 1, 1938, the Redwood Manufacturers Company of Pittsburgh, Contra Costa County, and Millmen's Union No. 1956 of Contra Costa County, made a contract (Exhibit 123-8, pp. 560-4), which contained a paragraph identical with the substituted Paragraph 17 which in the Fall of 1938 replaced as aforesaid (pp. 32-33, *supra*) Paragraph 17 in the contract of 1938 as first made (561); and it also contained a clause similar to Paragraph 18 in the 1938 contract, exempting from its operation articles in interstate commerce (562).

At the foot of that contract were the signatures of the only parties named in the contract as the contracting parties (560), to wit: the Redwood Company and Millmen's Union No. 1956. These were followed by the signatures of "California State Council of Carpenters, by J. F. Cambiano, President, and D. H. Ryan, Secretary," and of "United Brotherhood of Carpenters & Joiners of America, by J. F. Cambiano, General Representative" (562).

On a page after the signatures there was the following addendum (562-3):

> "It is to be confirmed by the International of the U. B. of C. & J. of A. that they will not approve any

agreements entered into between the employers and the local unions under their jurisdiction in the counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara, unless said agreements be uniform with respect to rates of wages, hours, and working conditions.

"It is understood between the Company and the Union, that this section is being included with the complete understanding that in this and in future agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside of the six counties involved in this agreement. In general, such competition is as listed in Section 20."

It is impossible to see how this contract could link the United Brotherhood to the conspiracy here charged. If it had any relevancy at all, it worked the other way.

This Redwood Manufacturers Company was unionized by Local Union 1956 in 1937. Previously it had been an open shop for 37 years (1048). In the Fall of 1938 it agreed to put into effect the compromise wage scale of $8.50 per day which, as aforesaid (pp. 34, 40, 41, *supra*), was then being accepted by the principal employers throughout the Bay Area (1038, 1042, 1107),—thereby adding Contra Costa to the six counties in the Bay Area (1100, 1106).

Obviously, the signature of the United Brotherhood through Mr. Cambiano was appended because of the aforesaid addendum at the end. That addendum, as its face shows, was for the purpose of assuring the Redwood Manufacturers Company that the United Brotherhood would not stultify itself, *i. e.*, would do nothing to break the uniformity of wages, hours and working conditions throughout the six counties of the Bay Area, and thereby leave that Company at a disadvantage. So far from contemplating exclusion of articles manufactured outside the Bay area, it recognized and provided for competition between the Redwood Company and outside manufacturers,

and expressly exempted articles in interstate commerce (562-3). (*Barker Painting Co.* v. *Brotherhood of Painters*, 15 Fed. (2d) (C. C. A. 3) 16, 18.)

SUBDIVISION XI

The formal act of Mr. M. A. Hutcheson in endorsing "approved" on the By-Laws and Trade Rules of the Bay Counties District Council cannot possibly convict the United Brotherhood of this alleged crime.

The final effort of the prosecution to connect the United Brotherhood with the alleged conspiracy rests on the fact that a printed booklet of over 30 pages (Ex. 2, p. 415), entitled "By-laws and Trade Rules Bay Counties District Council of Carpenters and Joiners of America, San Francisco and Vicinity, With Jurisdiction in San Francisco, San Mateo, Marin and Alameda Counties", bears at the bottom of the cover, the following (415):

> "Adopted February 22, 1939,
>
> Approved by First General Vice President, M. A. Hutcheson, May 26, 1939, In Effect May 26. 1939."

Concerning the First General Vice President, the Constitution of the Brotherhood provides (413):

> "He shall have power to examine, approve or disapprove of local union, District Council, State Council or Provincial Council laws."

Obviously, since there are local unions in all sizeable localities throughout the United States and Canada and District Councils in all large cities, and since these subsidiary bodies are constantly amending their laws, hundreds of these documents come to the First General Vice

President every year. His only duty as regards them is to see that they do not violate any provisions of the General Constitution of the United Brotherhood, for that Constitution expressly gives to all these subsidiary bodies *plenary local autonomy*, including the unrestricted right to make laws

> "which do not conflict with the laws of the international body" (461-2).

The First General Vice President is not a lawyer but a carpenter. It neither is nor could be part of his duties to examine these scores of documents which come to him constantly in order to determine whether or not they contain anything which, by any possibility, might suggest a possible violation of national, state or municipal laws.

In this booklet, at page 29, under a chapter entitled "Millmen" and under a sub-heading entitled "Extract of Agreement Made With Mill Owners", there is the following (416):

> "Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.
>
> "Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States."

The matter thus quoted, it will be observed, is merely a declaration of the decades-old policy for the effectuation of which the carpenters and millmen in the Bay Area had been striving through the years, to wit: that they would refuse to handle any material which was made at

a lower wage scale or under less favorable working conditions or by labor not recognized as union labor. (See pp. 41-43, *supra*.)

Moreover, as we have already shown, these very declarations, in substantially the same form (including the language of Section 3), had been, since 1903, part of the rules and the contracts of the Building Trades Council embracing all the unions engaged in construction work of any kind in San Francisco (pp. 41-43, *supra*).

We submit that it is absurd to say, as does the prosecution, that this carpenter who was the First General Vice-President and who received by-laws and amendments by the score constantly, placed the stigma of conspiracy and crime on the whole United Brotherhood of 350,000 members merely because he authenticated this pamphlet as an exercise of local autonomy under the General Constitution of the Brotherhood.

POINT V

The decision of this Court in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797 (June 18, 1945), did not involve any of the four points as to which this Court has requested further argument herein.

It also does not militate against any of the contentions in our main and reply briefs on the former argument.

(1) In the *Allen Bradley* case, Section 6 of the Norris-LaGuardia Act was not involved.

The activities there in suit were the activities of the Union and of the employer associations as principals. No issue of agency was involved. Moreover, the suit was a civil action for injunction. No question as to the criminal or imputed responsibility of anyone was presented.

The only reference in this Court's opinion to the Norris-LaGuardia Act was by way of reaffirming its decision in the *Hutcheson* case that the Sherman, Clayton and Norris-LaGuardia Acts must be jointly considered in determining whether activities of a labor union run counter to anti-trust legislation. The conclusion of this Court's opinion was that where business groups had combined to eliminate competition among themselves in violation of the anti-trust laws, labor unions could not with impunity aid and abet such a combination.

(2) In the present case, no such formula was presented to the jury, and no such legal test was made a condition of a conviction.

We cannot conceive that, if the Trial Court in the present case had had before it the subsequent decision of this Court in the *Allen Bradley* case, it could or would have charged the jury as it did. The charge as given treated the Clayton and the Norris-LaGuardia Acts as wholly inapplicable. It excluded the whole subject of immunity. It again and again ruled intent and self-interest to be irrelevant. It eliminated as a material factor the actuality of a labor dispute and the settlement thereof. It held that the right of the unions to act with impunity in their self-interest terminated the moment the employers, by acceding, created an understanding and agreement and thus, in legal parlance, a combination (pp. 26-34 of our former Main Brief).

On the other hand, in the *Allen Bradley* case this Court expressly recognized and declared the intent of Congress "to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining" (p. 806). And this Court said (p. 809):

> "Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods.

> Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. *We may assume that such an agreement standing alone would not have violated the Sherman Act.* But it did not stand alone. It was but one element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other businessmen from that area, and to charge the public prices above a competitive level." (The italics are ours.)

The conclusion of this Court was that where a labor union deliberately acted to aid and abet such "larger program" on the part of the contractors and manufacturers, it could have no immunity in such aiding and abetting.

We repeat that no such doctrine, phraseology or test was placed before the jury in the present case. On the contrary, the jury was told by the Trial Court the very opposite. It was told that a bargaining agreement in which the employers agreed, at the unions' demand advanced for the unions' benefit, not to buy goods manufactured at a wage scale or under working conditions inferior to that recognized by the defendant unions, was a "combination" and possessed no immunity for the unions. In the opinion of the Trial Court, such an agreement was, in and of itself and without more, a criminal violation of the anti-trust laws (pp. 25-34 of our former Main Brief).

Obviously, the tests of union responsibility as declared in the *Allen Bradley* case illustrate the decisively prejudicial character of the instructions given in the present case, and also the vital need for different and correct instructions.

(3) Furthermore, what was said by this Court in the *Allen Bradley* case must be read and understood in the light of the facts of that case—facts utterly different from those which existed, or which under proper instructions the jury could have found to exist, in the present case.

Among other outstanding factual differences, we enumerate the following:

1. In the agreements of 1936 and 1938 in the present case there was no ban on articles merely because of geographical origin. The test was not source but wages and working conditions or union label (982, 896-901). On the other hand, in the *Allen Bradley* case the ban was against articles made outside the Metropolitan Area, irrespective of wages, working conditions or union affiliation.

2. The closed shops created by the agreements of 1936 and 1938 in the present case operated as against non-conforming employers anywhere—including those in the Bay Area itself.

3. In the *Allen Bradley* case, according to the findings therein, Local 3 expressly promised the local manufacturers and contractors an exclusive market within the city so that they could name their own prices to offset increased production costs. No such promise and no such purpose were expressed in the agreements of 1936 and 1938 in the present case. Under those agreements the local signing manufacturers were not protected in the slightest from competition from other manufacturers wheresoever situated who actually did conform as to wages and working conditions.

4. In the *Allen Bradley* case, according to the findings therein, it was agreed that union members should work only on switchboards of local manufacture by union shops. The contracts of 1936 and 1938 in the present case expressed no such agreement. Work was not confined to articles of local manufacture by union shops.

5. In the *Allen Bradley* case there was a three-cornered agreement. The agreement was between three groups—manufacturers, contractors and union—and, according to the findings, it was agreed that the contractors should have the sole power to buy materials for any job. In the present case, the agreement was solely between the union and the signatory employing manufacturers; and there was no agreement that contractors (or, indeed, anyone else) should have the sole power to buy materials for any job.

6. Moreover, in the present case, all the endeavors of the union defendants to show that there was a bitter struggle going on throughout California and the so-called northwest between the A. F. L. unions on the one hand and the C. I. O. unions and non-union labor on the other hand, were ruled out by the Trial Court, to the great prejudice of the union defendants. (See pp. 6-7, 51 of our former Main Brief; and pp. 2-3 of our former Reply Brief.) No such situation was presented in the *Allen Bradley* case.

CONCLUSION

The Judgment against the United Brotherhood should be reversed and the Indictment dismissed, or, at least, a new trial ordered.

April 1, 1946.

Respectfully submitted,

JOSEPH O. CARSON,
CHARLES H. TUTTLE,
HUGH K. MCKEVITT,
Attorneys for this Petitioner.